

PATENT
Y0R19990198US1 IBM-151

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	McFeely, et al.
Serial Number	:	09/378,502
Filing Date	:	August 20, 1999
Examiner	:	Bret P. Chen
Group Art Unit	:	1762
For	:	IMPROVED DELIVERY SYSTEM FOR GASES VIA THE SUBLIMATION OF PRECURSORS

TO: The Honorable Commissioner of Patents
and Trademarks
Post Office Box 1450
Alexandria, VA 22313-1450
Attention: Office of Petitions

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**PETITION FOR RECONSIDERATION OF AN ADVERSE DECISION TO A
PETITION TO WITHDRAW HOLDING OF ABANDONMENT-OR
IN THE ALTERNATIVE TO REVIVE A CASE UNAVOIDABLY ABANDONED
VIA 37CFR 1.137(a)**

Sir:

This "Petition for Reconsideration..." is filed requesting reconsideration of the decision signed by Mr Thomas Hawkins, Office of the Director, Office of Patent Publications.

The above-identified application was held abandoned by the USPTO in a Notice of Abandonment dated February 4, 2003, for Applicants' failure to timely file a proper reply to an Office letter dated August 13, 2002.

Said Office letter stated in pertinent part, "PLEASE SEND IN NEW DECLARATION WITH 1ST INVENTORS MAILING INFORMATION." Applicants responded timely to said Office letter by transmitting by mail the corrected declaration on September 13, 2002 as evidenced in the certificate of mailing certificate set forth at the bottom of the transmittal amendment paper that accompanied the declaration. Applicants did receive in return a postcard stamped September 23, 2002 (Exhibit 1) by the USPTO mail room acknowledging receipt of the submissions.

For reasons unknown to Applicants and their attorney, the Patent Office obviously did not process the Exhibit 1 submission and did not direct same to the Office of Patent Publications or some other appropriate group within the USPTO since the Notice of Abandonment in this case was issued on February 4, 2003.

Following the receipt of the Notice of Abandonment, Applicants did acknowledge timely (i.e., within two months of the date of same) receipt of the Notice of Abandonment by sending a copy of the amended declaration and a photocopy of the Exhibit 1 stamped postcard confirming that the requested declaration had been timely filed. A copy of the stamped postcard receipt to this submission dated March 26, 2003 is included as Exhibit 2.

After no response was received from the USPTO with respect to this submission, Applicants' attorney telephoned the USPTO to determine the status of the application. In a telephone call to Applicants' attorney, Ms Lewis of the USPTO stated that she was checking the status of the above-identified application and, to summarize, the abandoned status could be withdrawn if Applicants' attorney could establish proof that the requested declaration was timely filed. Applicants filed the October 19, 2004 Petition with respect to the above-identified application, (the contents of which are hereby incorporated herein) detailing the relevant sequence of events that transpired during the prosecution of the application.

The October 19 Petition has been dismissed based upon the fact that it was not filed within two months of the issuance of the Notice of Abandonment. Further, the petition was dismissed based upon the following reason: *"Petitioner's copy of a postcard receipt, which Petitioner states acknowledges the receipt of the response to a Notice of Abandonment, do not support receipt of a response, since it does not properly identify a response as required in MPEP 503."*

As noted above, the Petition was submitted to present the total picture of the facts thereby explaining specifically what Applicants had done to comply with the requirements of the USPTO with respect to this case. It was not meant to comply with the two month period as set forth in 37 CFR 1.181(f), since to Applicants way of thinking, that had already been done. Its purpose was to state that the Notice of Abandonment was responded to within the requisite two month period as evidenced by Exhibit 2.

In response to a second telephone call from Ms Lewis, Applicants sent a copy of Exhibit 2 on October 21, 2004. 0

Applicants letter accompanying the copy of Exhibit 2 to Ms Lewis stated: *"Pursuant to a request from the USPTO for proof that a submission was sent to the USPTO on March 19, 2003 (received and stamped March 23, 2003) in response to a Notice of Abandonment dated February 4, 2003, Applicants send herewith a copy of a postcard receipt stamped by the USPTO acknowledging its receipt within a 2 month period from the date of the Notice of Abandonment."*

The Patent Office has stated that the case was abandoned for failure to timely file a proper reply. Its basis for dismissing the petition is that 1. the "Petition to Withdraw Holding of Abandonment" was not filed within two months of the Notice of Abandonment and 2. the stamped postcard receipt does not support receipt of a response.

Exhibit 1, (the postcard receipt stamped by the USPTO which accompanied the amended declaration in this case) is unassailable evidence that the requested paper was timely filed.

The Decision on Petition cites MPEP 503 in support of the assertion that the stamped postcard receipt does not support receipt of a response. It is important to note that there are two postcards in this case. One for filing the declaration (09/23/2002) (Exhibit 1) and the other for responding to the Notice of Abandonment (03/26/2003) (Exhibit 2).

Section 503 of the Manual of Patent Examining Procedure (MPEP) relates to *"Application Number and Filing Receipt."* As the issue in this matter does not relate to Application Numbers and Filing Receipts, it is assumed that the Decision is referring to the Post card section in MPEP 503 states inter alia:

"...

RETURN POSTCARD

If a receipt<for> any item (e.g., paper filed in the USPTO) is desired, it may be obtained by enclosing with the paper a self-addressed post card specifically identifying the item. The identifying data on the postcard should be so complete as to clearly identify the item for which a receipt is requested..."*

The postcard submitted with the declaration (Exhibit 1) gives the Attorney Docket numbers, the name of the inventor and identification of the paper which accompanied the card, and the stamped receipt which is September 23, 2002. This is *prima facie* evidence that a response was received by the USPTO.

The actual amendment filed September 13, 2002 which was accompanied by Exhibit 2 has a proper heading with all pertinent and necessary information presented.

An issue to be addressed then is, does the information presented on Exhibit 2 properly identify receipt of the Exhibit 2 response, pursuant to MPEP 503?

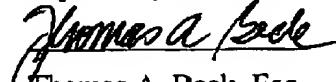
Applicants submit that there is sufficient information on the Exhibit 2 receipted postcard to establish that the required document was submitted. The declaration and transmittal document are the critical items, as they are the items that are included within the USPTO's file wrapper on the case. The inventor's name is set forth on the card with a description of the item presented: e.g., "declaration with address of McFeely." The USPTO is not relying on what is on the postcard to place the papers in the appropriate file. The filed document (i.e., an amendment) in every instance must include the correct Applicant, serial number, filing date, Examiner, Group Art Unit and Title. The postcard receipt does not require that all of that information be included. The section of MPEP noted above requires "*identifying data on the postcard should be so complete as to clearly identify the item for which a receipt is requested...*" The section then goes on to cite examples of information that could be included on the receipt. These are discretionary items to be placed on the postcard receipt, as opposed to the mandatory identification requirements for amendments or other documents which are submitted for review by the Examiners. Applicants respectfully submit that the information submitted on the postcard receipts comprising Exhibit 1 and Exhibit 2 do establish that the declaration was timely filed.

The Exhibit 2 (postcard receipt stamped 03/26/2003) clearly establishes that it relates to application number 09/378,502. As stated on the face of the Exhibit 2, the documents were submitted in response to the Notice of Abandonment and consisted of the declaration, the receipt for filing (i.e. the original postcard receipt) and the Notice of Abandonment sent by the USPTO.

Applicants respectfully request that this petition be granted. There is no proper basis for the holding of abandonment of this application as the original paper demanded (the corrected declaration) was in fact filed as evidenced by Exhibit 1. The Notice of Abandonment *per se* was incorrect as the paper had been filed within the time designated. Further, the Notice of Abandonment had been responded to timely with a copy of the originally submitted paper and the original postcard receipt (Exhibit 2).

For purposes of this petition and relating to 37 CFR 1.137(a), as noted above, the required reply to the outstanding Office action has been previously filed. There was no delay in filing the reply as it was in fact filed. Any petition fee should be charged to Deposit Account 50-0510.

Respectfully Submitted,



Thomas A. Beck, Esq.

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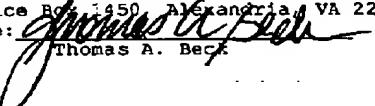
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I hereby certify that this supplemental paper is being telefaxed to (703) 872-9306 on the date indicated below and addressed to the Commissioner of Patents & Trademarks, Office of Petitions Post Office Box 1450, Alexandria, VA 22313-1450.

Signature: 

Name: Thomas A. Beck

Date: December 27, 2004

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McFEELY ET AL
DECLARATION w/ADDRESS OF
MCFEELY



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EXHIBIT 1

09/378,502

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IBM 151

09/378,502

03/19/03

*Declaration and receipt for filing
Notice*



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EXHIBIT 2
09/378,502

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